

No. 15041

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IN THE  
**United States**  
**Court of Appeals**  
FOR THE NINTH CIRCUIT

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MA CHUCK MOON and  
MA CHUCK WOON,

*Appellants,*

vs.

JOHN FOSTER DULLES,

Secretary of State of the United States,  
HERBERT BROWNELL, Attorney  
General of the United States, and  
JOHN P. BOYD, District Director,  
Immigration and Naturalization Service,

*Appellees.*

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UPON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
NORTHERN DIVISION

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HONORABLE WILLIAM J. LINDBERG, *Judge*

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**APPELLANTS' REPLY BRIEF**

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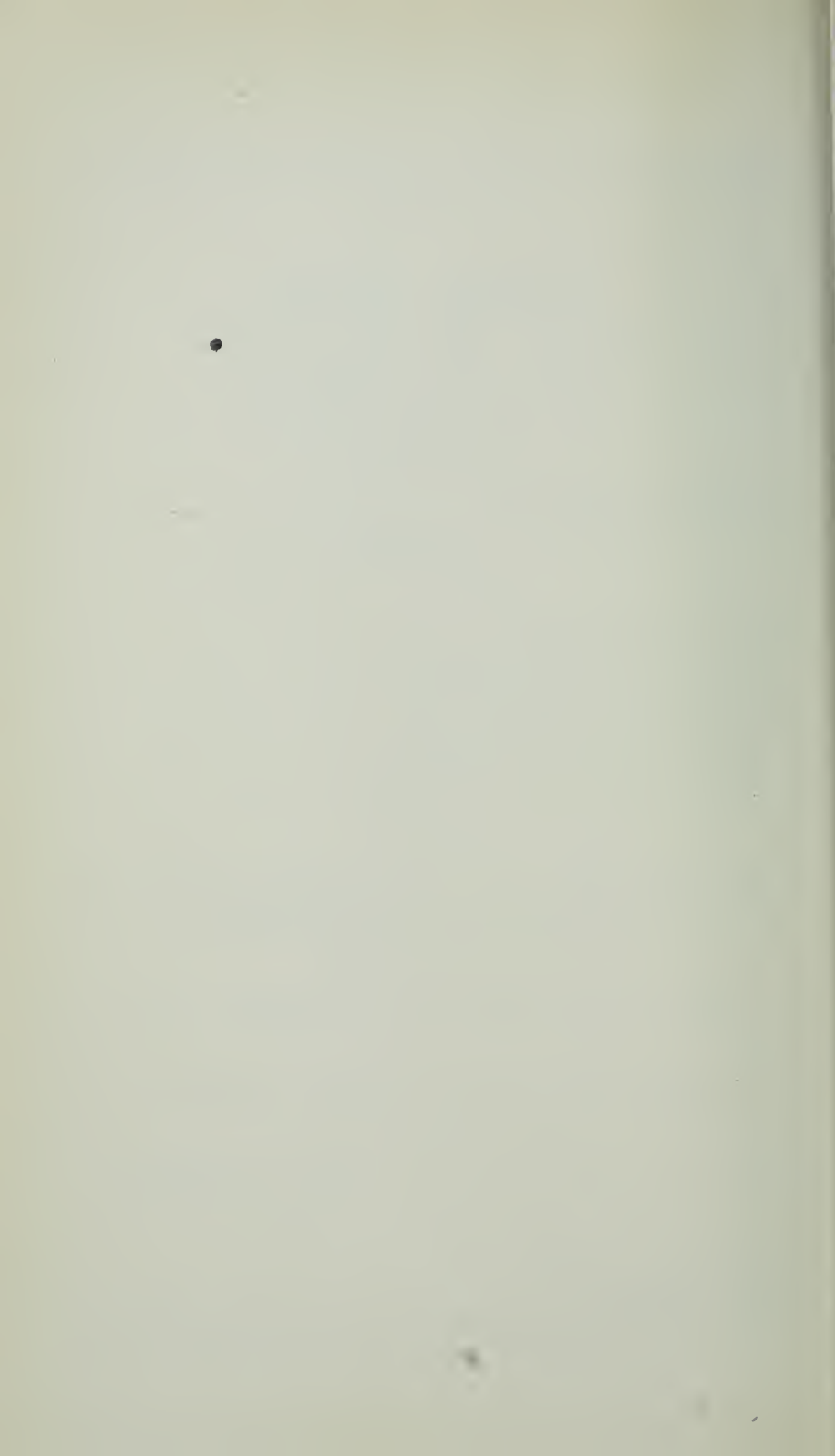
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**APPELLANTS' ANSWERING ARGUMENT**

In Appellees' statement of the case the impression is given that this appeal involved *Ma Chuck Wun*, as well as Ma Chuck Moon and Ma Chuck Woon, which is not true.

This appeal concerns only Ma Chuck Moon and Ma Chuck Woon.

Appellees properly pose the questions presented, which are: As applied to the former action:

1. Is a judgment of dismissal for lack of sufficient evidence, entered after trial on the merits and without qualification as to prejudice, a judgment on the merits for the purpose of applying the doctrine of *res judicata*?
2. Does application of the doctrine of *res judicata* bar an action for declaratory judgment instituted under the provisions of 8 U.S.C. 1503(a) after an adjudication on the merits against the plaintiffs in an action for declaratory judgment under the provisions of 8 U.S.C. 903?

These are the only questions involved. The judgment of dismissal here is predicated on the doctrine of *res judicata* based upon Rule 41 (b) Federal Rules of Civil Procedure, which so far as here pertinent reads:

“\* \* \* Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, *other than a dismissal for lack of jurisdiction or for improper venue*, operates as an adjudication on the merits.”

and upon the provisions of Rule 56, Rules of Civil Procedure.



(1) *An involuntary dismissal should not be ordered, if on the facts it appears that any relief could be granted.* (Barron v. Holtzoff, p. 641).

*Dipson Theatres v. Buffalo Theatres*, 8 F.R.D. 461.

Here, we have affidavits, which are not denied by any of the appellees unequivocally setting forth facts of birth and identity of appellants as American Nationals who have brought an action under an entirely new statute (Sec. 1503 (a) Title 8) applicable only to those persons within the United States in which it is claimed and nowhere denied the Director of Immigration *seeks to deport as aliens*, without any counter affidavits whatever.

(2) On the second proposition the doctrine of *res judicata*, we have argued this question fully in our opening brief and will burden the court no further except to say that after a painstaking and careful search of the adjudicated cases we have found no case where the doctrine of *res judicata* has ever been applied to a case involving the nationality status of Americans born abroad.

It is respectfully submitted that this appeal involves an entirely different situation than existed in the former action. Then there was no threat of deportation of appellants as aliens, while here, under the

pleadings we assert appellants are entitled to prove in the district court that they are American Nationals to prevent the Immigration Service from deporting them to China, and as they have already shown by affidavit of their father and that affidavit has not been controverted in any manner they should in equity and good conscience be adjudged American Nationals on the showing made.

Besides, in the former case, there was no affirmative finding that they were not who they claimed to be.

It is therefore respectfully submitted that the court erred in refusing to grant appellants' motion for summary judgment and in granting summary judgment of dismissal in favor of appellees.

Respectfully submitted,

WILL G. BEARDSLEE  
*Attorney for Appellants*